

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

Barbara Stewart,

Plaintiff,

- against -

O R D E R

Michele Stewart,

19 Civ. 5960 (NRB)

Defendant.

-----X

Michele Stewart,

Counterclaim Plaintiff,

- against -

Barbara Stewart,

Counterclaim Defendant.

-----X

NAOMI REICE BUCHWALD

UNITED STATES DISTRICT JUDGE

The motion to hold William P. Stewart, III in contempt, see ECF No. 66-8, is denied. As a preliminary matter, the Court flatly rejects the suggestion that a non-party who fails to respond to a subpoena within 14 days should be held in contempt. Cf. Jam Indus. USA, LLC v. Gibson Brands, Inc., No. 19 MC 508 (LTS), 2020 WL 4003280, at *6 (S.D.N.Y. July 15, 2020) ("[C]ourts in this district generally find non-parties in contempt upon failure to comply with a subpoena only when they also violate a court order to do so."). Nor does it appear that Mr. Stewart treated the subpoena with "contempt." Further, the suggestion that there has been any spoliation, where

the written record establishes that the documents were destroyed prior to the commencement of this lawsuit, is ill-founded.

Nevertheless, we do not expect a subpoenaing party to accept an unsworn statement to the effect that electronic device records simply were deleted long ago. In the interest of resolving the issues pertaining to the subpoenas once and for all, Mr. Stewart should: (1) submit an affidavit within two weeks detailing his practices with respect to the preservation and deletion of content on his electronic devices (e.g., text messages and emails); and (2) conduct a search of the contents of his electronic devices, using the keywords "Topaze," "DGBF," and "jewelry," and produce any results from those searches that relate to the ownership of the jewelry at issue.

The Clerk of Court is respectfully directed to terminate the motion pending at ECF No. 66.

Dated: New York, New York
August 28, 2020



NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

A copy of the foregoing has been sent via email and regular mail to:

William P. Stewart III
3 Benedict Ct.
Greenwich, CT 06830